

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: George Emanuel §
Serial Number: 10/658,569 §
Filed: Sept. 9, 2003 §
For: LASER NOZZLE AND IODINE §
INJECTION FOR COIL § Group Art Unit: 3752
§ Examiner: Christopher Kim

PETITION UNDER RULE 181(a) TO
REQUEST A WITHDRAW OF A HOLDING OF ABANDONMENT

Dear Sir:

This petition, pursuant to Rule 181(a), seeks relief from an erroneous determination that the above-referenced Application (“Application”) has been abandoned for failure to include a petition for an extension of time that accompanied the Office Action Response dated November 12, 2007 (“Response”).

I. ACTION REQUESTED

Applicant petitions the Commissioner, respectfully requesting the following relief:

1. Kindly withdraw the holding of abandonment of the Application dated April 15, 2008; and
2. Kindly proceed with full and complete examination of the Application.

II. ARGUMENTS

According to M.P.E.P § 711.04(c), if an applicant contends that an application is not abandoned, then the applicant can seek relief by means of a petition to withdraw of the holding

of abandonment. Under Rule 181(a), “[a] petition can be taken to the Commission...[t]o invoke the supervisory authority of the Commissioner in appropriate circumstances.”

Applicant contends that the Response did include a petition for an extension of time. According to 37 C.F.R. § 1.137(a)(3):

An authorization to charge all required fees, fees under § 1.17, or all required extension of time fees will be treated as a constructive petition for an extension of time in any concurrent or future reply requiring a petition for an extension of time under this paragraph for its timely submission. Submission of the fee set forth in § 1.17(a) will also be treated as a constructive petition for an extension of time in any concurrent reply requiring a petition for an extension of time under this paragraph for its timely submission.

Thus, by virtue of including a statement that any additional fee may be charged to a deposit account will operate as a “constructive petition.” On page 8 of the Response, Applicant included the following paragraph, which has served as a basis for operating as a “constructive petition” in many, many applications:

Applicant does not believe that any fees are due; however, in the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper, to Deposit Account 50-2180 of Storm LLP.

Thus, it is abundantly clear that the Examiner has not read the Response. It was only as a courtesy that the Applicant even bothered to file a formal petition for an extension of time on January 31, 2008 (which was *not* necessary). Hence, Applicant requests relief under Rule 181(a) by means of the withdrawal of the Notice of Abandonment because of the misplacement or loss of the Response that would necessarily invoke the supervisory authority of the Commissioner.

III. CONCLUSION

Applicant, therefore, respectfully requests that the Commissioner grant this Petition in all respects.

Applicant does not believe that any fees are due; however, in the event that any fees are due, the Commissioner is hereby authorized to charge any required fees due (other than issue fees), and to credit any overpayment made, in connection with the filing of this paper to Deposit Account No. 50-2180 of Storm LLP.

Respectfully submitted,

Dated: May 1, 2008
Storm LLP
901 Main Street
Suite 7100
Dallas, Texas 75202
Telephone: (214) 347-4710
Fax: (214) 347-4799

/John J. Patti/
John J. Patti
Reg. No. 57,191